IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.103 of 2005

IN

A.O.NO.963 OF 2004

Mahavir Land Developers
Pvt. Ltd. & Ors. .. Applicants

vs.

Smt. Lilabai M. Mandlik & Ors .. Respondents

Mr. M.M.Sathaye, Advocate for the Applicant.

Mr. , Advocate for the Respondent.

CORAM : A.S.OKA, J.

DATED : 1st February, 2005.

P.C. :

1. Heard Shri Sathaye for the appellant. By the impugned Judgment and Order dated 16.7.2004 the appellants have been restrained by an order of temporary injunction from alienating, creating third party interest in respect of the suit property till the decision of the suit. The order sheet shows that from 16.7.2004 this Court has not granted any ad-interim relief. As a result, the said order is in operation since last more than

five months. It is not in dispute that in the year 1997 ad-interim order of status quo was passed by the Trial Court in favour of the original plaintiff and the said order was in operation till date of passing the interim order. The learned Counsel appearing for the appellant relied on certain documents annexed to the Civil Application and submitted that the said documents were not produced before the learned trial Judge when application at exhibit 5 was heard. He submitted that if the said documents are considered it will become very clear that the impugned order is ex-facie illegal.

2. As stated earlier the impugned order is in operation for last more than five months. From 1997 till disposal of the application for temporary injunction, the ad-interim order of status quo was operating against the appellant. By the impugned order, the appellants are restrained from creating third party interest in respect of the property in dispute till the disposal of a Civil suit. Staying the operation of this order without hearing the appeal finally

will amount to allowing appeal at this stage. Hence the application is rejected with no order as to costs.

3. It is made clear that pendency of appeal in this Court will not operate as stay of proceeding of the suit and the learned trial Judge will proceed with the hearing of the suit.

(A.S.Oka, J.)